



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Report of the Cabinet Economic Policy Committee: Period Ended 20 December 2024

On 28 January 2025, Cabinet made the following decisions on the work of the Cabinet Economic Policy Committee for the period ended 20 December 2024:

Out of Scope

ECO-24-MIN-0314

**Independent Review Function for Aviation:  
Scope of Decisions and Review Fees**  
Portfolio: Transport

CONFIRMED

Out of Scope

Out of Scope



Rachel Hayward  
Secretary of the Cabinet

PROACTIVELY RELEASED BY  
THE MINISTRY OF TRANSPORT TE MANATŪ WAKA



# Cabinet Economic Policy Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Independent Review Function for Aviation: Scope of Decisions and Review Fees

**Portfolio**                      **Transport**

On 18 December 2024, the Cabinet Economic Policy Committee:

- 1        **noted** that the Civil Aviation Act 2023 (the 2023 Act), which comes into force on 5 April 2025, introduces a new independent review function (IRF) to enable applicants to seek expert independent reviews of decisions made by (or on behalf of) the Director of Civil Aviation (the Director);
- 2        **noted** that the 2023 Act leaves the scope of decisions to be covered by the IRF to be specified in regulations, and that the Ministry of Transport has consulted publicly on options for setting the scope of the IRF [ECO-24-MIN-0128];
- 3        **agreed** that the scope of reviewable decisions will comprise:
  - 3.1      the key relevant categories of decisions taken by (or on behalf of) the Director that are appealable to the District Court;
  - 3.2      decisions taken by (or on behalf of) the Director on the granting of individual exemptions from regulations and the Civil Aviation Rules;
- 4        **noted** that the Ministry of Transport has also publicly consulted on options to partially recover the costs of IRF reviews from applicants [ECO-24-MIN-0214];
- 5        **agreed** that a two-tiered fixed fee be applied of \$1,000 (excl. GST) per IRF review application for individuals, and \$1,500 (excl. GST) per IRF review application for organisations;
- 6        **invited** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to create new regulations to set:
  - 6.1      the scope of reviewable decisions, as set out in paragraph 3 above;
  - 6.2      fees to partially recovery the costs of reviews, as set out in paragraph 5 above;
- 7        **authorised** the Minister of Transport to make final decisions on the detail of the regulations and to make changes, consistent with the policy intent of the paper under ECO-24-SUB-0314, in response to any issues that arise during the drafting of the regulations;

- 8 **noted** that the Minister of Transport intends to report back to the Cabinet Legislation Committee seeking approval of regulations setting the scope of the IRF and IRF review fees by the end of February 2025.

Rachel Clarke  
Committee Secretary

---

**Present:**

Rt Hon Winston Peters (Chair)  
Hon David Seymour  
Hon Shane Jones  
Hon Brooke van Velden  
Hon Chris Bishop  
Hon Simeon Brown  
Hon Erica Stanford  
Hon Louise Upston  
Hon Judith Collins KC  
Hon Todd McClay  
Hon Tama Potaka  
Hon Matt Doocey  
Hon Simon Watts  
Hon Melissa Lee  
Hon Penny Simmonds  
Hon Chris Penk  
Hon Nicola Grigg  
Hon Andrew Bayly  
Hon Andrew Hoggard  
Hon Mark Patterson

**Officials present from:**

Office of the Prime Minister  
Office of Hon Chris Bishop  
Office of Hon Erica Stanford  
Office of Hon Simon Watts  
Officials Committee for ECO

PROACTIVELY RELEASED BY  
THE MINISTRY OF TRANSPORT TE MANATŪ WAKA

**[IN CONFIDENCE]**

Office of the Minister of Transport

Cabinet Economic Policy Committee

**Independent review function for aviation: scope of decisions and review fees****Proposal**

- 1 I seek the Committee's agreement to create regulations to:
  - set the scope of the new independent review function (IRF) established by the Civil Aviation Act 2023 (the 2023 Act)
  - apply fees to partially recover the costs of IRF reviews from review applicants.

**Relation to government priorities**

- 2 The Government is committed to rebuilding the economy, easing the cost of living and delivering the frontline services New Zealanders need in an efficient way. The IRF will enhance the rights of aviation participants by providing them with an alternative avenue to challenge regulatory decisions, and support improvements in the performance of the civil aviation regulatory system over time.

**Executive summary**

- 3 I have considered the outcome of public consultation on the decisions to be covered by the IRF and propose that the scope of the IRF comprise:
  - the key relevant categories of decisions taken by (or on behalf of) the Director of Civil Aviation (the Director) that are appealable to the District Court
  - decisions taken by (or on behalf of) the Director on the granting of individual exemptions from regulations and the Civil Aviation Rules (the Rules).
- 4 Following public consultation on options to partially recover the costs of IRF reviews from applicants, I propose that fixed fees be set at \$1,000 (excl. GST) per review for individuals, and \$1,500 (excl. GST) per review for organisations.
- 5 I seek Cabinet's authorisation to issue drafting instructions to the Parliamentary Counsel Office (PCO) to create new regulations to bring these proposals into effect. I intend to ask the Cabinet Legislation Committee (LEG) to approve regulations setting the scope of the IRF and IRF review fees by the end of February 2025.

**Background**

- 6 The IRF will carry out reviews of specified decisions made by (or on behalf of) the Director from 5 April 2025 when the 2023 Act comes into force. The function was created in response to stakeholder concerns – expressed in submissions on the Civil Aviation Bill – about the time and costs of appealing decisions made by the Director through the courts, and the court system's lack of expertise on civil aviation matters.
- 7 The IRF will provide an expert independent review option that is faster and less costly than the court system. It will also promote transparency, timeliness and accountability, and support improvements in decision-making over time.
- 8 The final decision in response to each IRF review rests with the Director. This is to ensure that the Director retains the ultimate responsibility for the safe and secure operation of the civil aviation system.

## The 2023 Act requires that regulations specify the scope of the function

- 9 The 2023 Act leaves the categories of decisions to be covered by the IRF to be specified in regulations. The IRF will not cover medical certification decisions, as these are already reviewable through the medical convener procedure that the 2023 Act continues.
- 10 In July 2024, Cabinet agreed that the Ministry of Transport (the Ministry) release a consultation document and seek stakeholder feedback on three options to set the scope of the IRF [ECO-24-MIN-0128 refers]. The consultation was undertaken over four weeks to 24 September 2024.
- 11 The three IRF scope options consulted on were:
  - 11.1 Option 1 - includes the relevant categories of **Director decisions that are appealable to the District Court**. This option focuses reviews primarily on decisions centred on 'aviation documents' that affect the ability of individuals/entities to operate within the civil aviation system.<sup>1</sup> Around 2,000 decisions within this scope are made annually.
  - 11.2 Option 2 - based on Option 1, with the addition of **decisions on the granting of individual exemptions from regulations and Rules**.<sup>2</sup> Fewer than 100 decisions on exemptions are made each year.
  - 11.3 Option 3 – includes **all regulatory Director decisions**, except where inappropriate or inapplicable.<sup>3</sup> Around 100,000 decisions a year are covered by this option.

## Submissions on the scope of the function expressed a range of views

- 12 The Ministry received 13 submissions on the options for the scope of the IRF – three from individuals and 10 from civil aviation organisations, including from the Civil Aviation Authority (CAA).
- 13 The CAA indicated it strongly supports participants being able to challenge decisions that have a major bearing on their ability to participate in the sector in a way that is more accessible than the court system. It submitted that the IRF scope should be limited to significant decisions that are appealable under the 2023 Act (effectively Option 1). It submitted that Option 3 would not support the policy intent for the IRF because there is a significant risk that the function would be overloaded with the demand for reviews of more minor decisions, which would inhibit the timely reviews of more impactful decisions.

<sup>1</sup> The relevant categories of appealable decisions are set out in section 453 of the 2023 Act. Some categories of Director decisions would be excluded from Option 1, as it would be inappropriate for the IRF to review them – eg medical certification decisions [section 453(3) (g)-(k)] given these are covered by the medical convener function; and decisions relating to investigation and enforcement [section 453(3) (e)-(f)] where there is a need for the CAA to act promptly to address public safety or security risks.

<sup>2</sup> Exemption decisions applying to any class of "*aviation participant, aeronautical product, aircraft, aerodrome, aviation-related service or other thing*" [section 322(1)(b) of the 2023 Act] would not be reviewable, as these class exemptions are deemed secondary legislation under section 322(5), and thus they are effectively part of the settings of the regulatory framework. Any decisions on individual exemptions from medical standards and certification Rule requirements would also be excluded under this option.

<sup>3</sup> In addition to the exclusion of the medical certification decisions and decisions relating to security, monitoring, investigation and enforcement, other exclusions under Option 3 would include decisions governed by the Solicitor-General's prosecution guidelines or established Court processes (in the case of infringement offence notices), and decisions on pecuniary matters relating to invoicing and payment of fees and charges.

- 14 Three organisations favoured Option 2 on the grounds it would enable reviews of decisions on exemptions while ensuring the demand for reviews would be likely to be manageable.
- 15 Five organisations indicated they favoured Option 3 to ensure a wider range of decisions would be reviewable. Discussions officials later held with some of these submitters, however, clarified that many of the decisions they advocated for inclusion would in practice be covered under Option 2 (for example because they were applications for exemptions to Rules, so would fall within the scope of Option 2).
- 16 The three submissions from individuals offered no comment relevant to the scope options.

**I consider Option 2 to be the most appropriate option to achieve the policy intent of the function**

- 17 Option 2 most effectively meets the policy intent of providing fast and accessible reviews, while supporting impactful improvements in decision-making in the aviation regulatory system over time.
- 18 Like Option 1, Option 2 provides a faster and less costly avenue to challenge 'appealable decisions' than going through the courts. However, Option 2 also includes decisions on individual exemptions – a feature supported by many submitters – and thereby provides more complete coverage of decisions that could have a significant impact on aviation participants.
- 19 Option 3, with its broad scope including lower-order decisions, is less likely to facilitate the faster review pathway that the IRF is intended to provide, as there are risks that the likely higher demand for reviews under this option would:
  - limit the reviewers' capacity to deliver timely reviews of the categories of decisions that have the most significant impact on applicants (this was acknowledged by several submitters)<sup>4</sup>
  - impose demands on CAA resources that intrude on the agency's day-to-day regulatory operations, and limit the Director's ability to make final decisions on reviewers' recommendations within the statutory time frame
  - dilute the incentives for participants to resolve issues with the CAA before escalating them to the level of an IRF review.
- 20 Implementing Option 2 minimises the risks to managing the IRF within available resources. This will be especially important during the initial months of its operation, when the process is new and reviewers are settling into their respective roles.

<sup>4</sup> The risk of overwhelming the function might be mitigated to some extent by the intended introduction of partial cost recovery for reviews (see following section), but it could not be expected to significantly limit the prospect of numerous requests for reviews of more minor decisions. This is because IRF fees are to be set at a (partial cost recovery) level that does not present an undue barrier to applicants.

Some submitters suggested introducing a 'materiality threshold' to reduce the risk of applications for reviews under Option 3 overwhelming the IRF. However, this would not be possible as reviewers have no powers under the 2023 Act to have the discretion to make judgements as to what decisions that have a 'material' impact on an aviation participant (and therefore should be subject to an IRF review).

**The Ministry has also completed public consultation on cost recovery options**

- 21 In September 2024, Cabinet agreed that the Ministry should publicly consult on options to partially recover the costs of the IRF through application fees for reviews. A partial cost-recovery approach reflects that applicants are the primary beneficiaries of the review function, while enabling review fees to be kept at a relatively affordable level for sector participants. [ECO-24-MIN-0214 refers]
- 22 The consultation document set out three options and fee levels to partially recover the costs of IRF reviews:
- Option 1 - **a single fixed fee** for all participants, set at \$1,000 (excl. GST) per application.
  - Option 2 - **a two-tiered fixed fee** of \$1,000 (excl. GST) per application for individuals, and \$1,500 (excl. GST) per application for organisations [preferred option].
  - Option 3 - **an hourly fee up to a cap**, comprising a base fee of \$432 (excl. GST), plus an hourly fee of \$189 (excl. GST), up to a cap of \$1,000 (excl. GST) for individuals and \$1,500 (excl. GST) for organisations.
- 23 The Ministry undertook four weeks public consultation during October 2024. Three submissions were received - one in favour of each of Option 1 and Option 2, while the third submission favoured a variable approach, based on the outcome of a review, with no fees being applied at all in cases where the review is successful and a Director's decision is reversed.

**I consider Option 2 to be the most appropriate option for partial cost recovery**

- 24 I consider that the two-tier fixed fee approach of Option 2 is more appropriate than the uniform fee structure under Option 1 as:
- decisions affecting organisations are likely to be more technically complex and therefore more time-consuming to review than decisions affecting individuals
  - organisations can generally be expected to have a greater capacity to pay than individuals.
- 25 Option 2 also utilises a fixed fee structure that is more straightforward to administer than the hourly fees under Option 3 and would thus provide more certainty about potential costs for applicants. It would also likely raise (marginally) more revenue than either Option 1 or Option 3.

**Next steps**

- 26 Subject to your agreement, I will issue drafting instructions for the Parliamentary Counsel Office (PCO) to create regulations setting the scope of the IRF and review fees proposed in this paper.
- 27 I also intend to bring a paper to the Cabinet Appointments and Honours Committee (APH) on the appointment of IRF reviewers in February 2024.



### Cost-of-living Implications

- 28 The scope of reviewable decisions for the IRF and the review fees proposed in this paper will not have a material impact on the cost-of-living.

### Financial Implications

- 29 The residual costs of the operation of the IRF (not covered by review fees) will be met by the Ministry out of Crown funding approved in Budget 2023 for the implementation of the 2023 Act.

### Legislative Implications

- 30 Section 443 of the 2023 Act provides that the scope of decisions to be covered by the IRF is to be specified in regulations. Section 415(1) of the 2023 Act provides statutory authority for the Government to apply IRF review fees. PCO has been consulted on the upcoming work to deliver the regulations in February 2025.

### Impact Analysis

- 31 A Regulatory and Cost Recovery Impact Statement has been completed and is attached at Appendix 1. It has been reviewed by the Ministry's Regulatory Impact Analysis Review Panel. The panel considers that the information and analysis summarised in the statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

### Climate Implications of Policy Assessment

- 32 The Climate Implications of Policy Assessment (CIPA) team has confirmed that the CIPA requirements do not apply to these proposals, as the threshold for significance is not met.

### Population Implications

- 33 There are no population implications associated with this paper.

### Human Rights

- 34 There are no human rights implications. Regulations developed to set the scope of decisions covered by the IRF and review fees will be consistent with the New Zealand Bill of Rights Act 1990.

### Use of External Resources

- 35 The Ministry has not engaged external resources to develop the proposals outlined in this paper.

### Consultation

- 36 The following agencies were consulted on the contents of this paper: the Ministry of Justice, the Treasury, the Parliamentary Counsel Office and the Civil Aviation Authority. The Department of the Prime Minister and Cabinet was informed.

### Communications

- 37 Once the Executive Council approves the two sets of regulations, they will be notified in the *New Zealand Gazette* and the Ministry will provide information on the Ministry's website and inform key stakeholders.

## Proactive Release

- 38 The Ministry will proactively release this paper within 30 business days after it has been confirmed by Cabinet. It will be subject to redactions, as appropriate, under the Official Information Act 1982.

## Recommendations

The Minister of Transport recommends that the Committee:

- 1 **note** that the Civil Aviation Act 2023 (the 2023 Act), which comes into force on 5 April 2025, introduces a new independent review function (IRF) to enable applicants to seek expert independent reviews of decisions made by (or on behalf of) the Director of Civil Aviation (the Director)
- 2 **note** that the 2023 Act leaves the scope of decisions to be covered by the IRF to be specified in regulations, and that the Ministry of Transport has consulted publicly on options for setting the scope of the IRF [ECO-24-MIN-0128 refers]
- 3 **agree** that the scope of reviewable decisions will comprise:
  - 3.1 the key relevant categories of decisions taken by (or on behalf of) the Director that are appealable to the District Court
  - 3.2 decisions taken by (or on behalf of) the Director on the granting of individual exemptions from regulations and the Civil Aviation Rules
- 4 **note** that the Ministry has also publicly consulted on options to partially recover the costs of IRF reviews from applicants [ECO-24-MIN-0214 refers]
- 5 **agree** that a two-tiered fixed fee be applied of \$1,000 (excl. GST) per IRF review application for individuals, and \$1,500 (excl. GST) per IRF review application for organisations
- 6 **invite** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to create new regulations to set:
  - 6.1 the scope of reviewable decisions, as set out in recommendation 3 above
  - 6.2 fees to partially recovery the costs of reviews, as set out in recommendation 5 above
- 7 **authorise** the Minister of Transport to make final decisions on the detail of the regulations and to make changes, consistent with the policy intent of this paper, in response to any issues that arise during the drafting of the regulations
- 8 **note** that the Minister of Transport intends to ask the Cabinet Legislation Committee to approve regulations setting the scope of the IRF and IRF review fees by the end of February 2025.

Authorised for lodgement

Hon Simeon Brown  
**Minister of Transport**

# Regulatory and Cost Recovery Impact Statement: Scope of independent review function and application of review fees

## Coversheet

Purpose of Document	
Decisions sought:	<div>To inform final Cabinet decisions on regulations to:<ul style="list-style-type: none"><li>specify which regulatory decisions will be reviewable by the independent review function (IRF) created by the Civil Aviation Act 2023 (the 2023 Act)</li><li>apply fees to partially recover the costs of IRF reviews.</li></ul></div>
Advising agencies:	Ministry of Transport
Proposing Ministers:	Minister of Transport
Date finalised:	6 December 2024
Problem Definition	
<p>The 2023 Act requires that regulations specify the scope of regulatory decisions covered by the IRF. We need to evaluate options for setting the scope based on how well they meet the policy intent of the function – which is to provide a more timely and less costly alternative to contest decisions made by the Director of Civil Aviation (the Director) than court action, and to support improved regulatory decisions over time.</p> <p>The Minister of Transport (the Minister) has also agreed to regulations being implemented to partially recover the direct and indirect costs of IRF reviews. We need to evaluate options for setting review fees in line with agency cost recovery principles.</p>	
Executive Summary	
<p>This Regulatory and Cost Recovery Impact Statement is set out in two sections:</p> <ul style="list-style-type: none"><li><b>Part A:</b> covers the setting of the scope of decisions to be covered by the IRF</li><li><b>Part B:</b> covers the application of review fees.</li></ul> <p>The regulatory impact analysis elements relate to Part A and the cost recovery analysis elements relate to Part B.</p> <p><b>Overview of Part A – setting the scope of the IRF</b></p> <p>The 2023 Act creates a new function for independent reviews of regulatory decisions made by (or on behalf of) the Director. The 2023 Act requires the scope of decisions that are covered by the function (reviewable decisions) to be specified in regulations.</p> <p>In July 2024, Cabinet agreed to the Ministry of Transport (the Ministry) releasing a consultation document and carrying out public consultation on three options to set the scope of reviewable decisions. [ECO-24-MIN-0128 refers]</p>	

Following a four-week public consultation, we propose that the scope of reviewable decisions should comprise key Director decisions that are appealable to the District Court, and decisions on granting individual exemptions from regulations and the Civil Aviation Rules (the Rules). This approach most effectively meets the policy intent of providing a more timely and less costly alternative to contest the Director's decisions than court action and minimises risks to managing the IRF within available resources. It also captures the most significant decisions made by the Director.

**Overview of Part B – application fees for reviews**

To help meet the operational costs of the function – including reviewer remuneration and expenses, technical advice and administrative costs – Cabinet agreed that the Ministry consult stakeholders on options for partial cost recovery and fee levels for the IRF. [ECO-24-MIN-0214 refers]

Following consultation, the Ministry proposes a two-tier fixed fee of \$1,000 (excl. GST) per review application for individuals, and \$1,500 (excl. GST) for organisations. This two-tier approach reflects that application costs are more likely to be a barrier for individuals than organisations, and reviews of decisions affecting organisations are expected to be typically more complex and therefore more expensive to conduct.

**Limitations and Constraints on Analysis**

It is difficult to predict the likely level and nature of IRF demand and the likely nature, duration and cost of reviews. There are no directly applicable data that can be used to forecast accurately the level and nature of demand and costs, and only limited wider contextual information is available. The weight of opinion expressed in submissions does not provide a clear indication of the likely level of demand and costs.

**Responsible Manager(s) (completed by relevant manager)**

Tom Forster, Manager Aviation  
Ministry of Transport



6 December 2024

**Quality Assurance (completed by QA panel)**

Reviewing Agency:	Ministry of Transport
Panel Assessment & Comment:	The Ministry of Transport's Regulatory Impact Analysis Review Panel has reviewed the Regulatory and Cost Recovery Impact Statement on the scope of the independent review function and application of review fees. The panel considers that the information and analysis summarised in the statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

# Part A – Scope of independent review function

## What is the context behind the policy problem?

1. Under the current civil aviation regulatory system, applicants may appeal key regulatory decisions to the District Court, under section 453 of the 2023 Act (previously section 66 of the Civil Aviation Act 1990). Appealable decisions are the most impactful decisions the Civil Aviation Authority (CAA) makes affecting individuals and organisations. They primarily control participation in the aviation system – including licensing pilots and air operators, and controlling the use of aircraft, equipment and flight systems.
2. During Select Committee consideration of the Civil Aviation Bill over 2021-22, submitters expressed concerns about the drawbacks of challenging the Director's decisions through the courts. They noted that undertaking judicial action is costly and there is typically a long interval between when a contested decision is made and the conclusion of the court process – it was cited that participants can wait around 3-4 years for a District Court hearing and associated costs can exceed \$300,000 a case. Submitters also expressed concerns about the courts' lack of sector expertise.<sup>1</sup>
3. The submissions advocated for an independent, specialist body to consider challenges to CAA regulatory decisions, including decisions concerning matters under the Rules.
4. In response, Parliament agreed to include provisions in the Civil Aviation Bill to enable regulatory decision-making by the CAA to be subject to additional scrutiny, by providing for independent reviews of how the Director exercises their functions and powers.
5. The empowering provisions did not specify which decisions were to be reviewable, and are not linked to the appeal provisions. Instead, they leave the scope of reviewable decisions to be determined by regulations under the new enactment. The use of regulations is intended to provide more flexibility than prescribing reviewable decisions in the primary legislation, whilst retaining a high level of executive scrutiny.

### ***The Ministry and CAA will support the operation of the review function***

6. The Ministry will provide secretariat and functional support for the review process, and also meet the costs of the remuneration of the two reviewers, who are to be appointed in early 2025, and the costs of any contracted expert advice (where necessary) for reviews involving technical matters. Reviewers will be expected to have a range of skills and experience, including legal and/or regulatory expertise.
7. The CAA will be required to provide relevant case information to reviewers on request, and the Director will also be required to consider and make final decisions in response to the reviewer's recommendations in each case.

### **The 2023 Act sets out the key features of the new function**

8. Subpart 5 of Part 10 of the 2023 Act sets out the key features of the new function. Reviews are to be available to a person in respect of whom a decision specified in regulations is made or an "owner, operator or person for the time being in charge of an aircraft or aeronautical product" that is the subject of a specified decision.
9. In order to determine the content of the regulations that specify the categories of decision that are to be reviewable, we need to evaluate options based on how well they meet the underlying policy intent of the function, as set out in paragraphs 13-15 below.

---

<sup>1</sup> The submissions were silent on the issue of the scope of CAA decisions that are appealable to the District Court.

## What is the policy problem or opportunity?

10. The IRF enables people or organisations who are dissatisfied with a reviewable decision to challenge it without incurring the expense of court proceedings or being subject to the delays inherent to the court system. By providing for regulations to specify the scope of reviewable decisions, however, the design of the IRF also makes it possible to open up to review a wide range of decisions in respect of which the primary legislation does not afford an appeal right.
11. An applicant for review could be any of the 35,095 individuals who hold an aviation document (as at June 2023), or a person seeking to become an aviation document holder. This includes pilot licence holders, engineers, flight instructors and air traffic controllers. Additionally, 890 organisations hold aviation documents, such as air operator, aircraft maintenance organisation, aerodrome operator and aircraft registration certificates.<sup>2</sup>
12. Potential scrutiny through the IRF process is expected also to strengthen the quality of, and sector confidence in, decision-making by the CAA in its capacity as the aviation safety regulator. This has a public benefit over time.

## What objectives are sought in relation to the policy problem?

13. The regulations will need to ensure the achievement of the intent of the IRF at the time it was included in the Civil Aviation Bill, which is to:
  - provide an expert independent review mechanism for appealable decisions that is quicker and less costly than consideration by the courts
  - promote good decision-making by strengthening accountability and good practice around regulatory decision-making – thus enhancing the effectiveness of, and public confidence in, the regulatory system over time.<sup>3</sup>
14. However, the fact that the Act opens up a much wider range of decisions to the possibility of review than just decisions that are subject to appeal to the District Court requires us to evaluate whether there is a compelling case to include *additional* categories of Director decisions (other than those appealable to the District Court) within the scope of the IRF.
15. This requires assessing the impact and potential benefits of including these other decisions *against* the need to maintain a manageable workload for the IRF, to ensure it can still achieve its primary purpose of carrying out timely reviews of the most impactful (appealable) decisions, as outlined in paragraph 13 above.
16. It will therefore likely be necessary to strike a balance between the breadth of reviewable decisions and the manageability of the function. The main risk is that including reviews of decisions on the wide range of more minor matters made by (or on behalf of) the Director within the scope of the IRF could effectively overload the function and compromise its ability to deliver timely reviews of more significant decisions.
17. The need to strike this balance reflects the *Legislation Design and Advisory Committee* (LDAC) guidelines on creating systems of appeal, review, and complaint:

*“The value of an appeal must be balanced in the particular circumstances against a consideration of the potential costs, implications of delay, significance of the subject matter, competence and expertise of the decision-maker in the first instance, and the need for finality.”<sup>4</sup>*

<sup>2</sup> Source: Civil Aviation Authority of New Zealand 2022–2023, Annual Report (2023).

<sup>3</sup> Ministerial briefing of 5 May 2022 (OC220345) refers.

<sup>4</sup> Legislation Design and Advisory Committee, Legislation Guidelines (2021 edition).



## Section 2: Deciding upon the IRF scope to address the policy problem

### What scope will options be considered within?

18. The range of options is limited by the nature of the categories of decisions made by the Director.
19. Certain categories of decisions are excluded from the scope of the IRF on the grounds they are inappropriate or inapplicable. The key exclusions are:
  - medical certification decisions – these are covered by the existing medical convener review function
  - decisions relating relating to security, monitoring, investigation and enforcement, where there is a need for the CAA to act promptly to address public safety or security risks
  - decisions to initiate proceedings in respect of offences under the Act, or Rules or regulations made under the 2023 Act or to issue an infringement offence notice – these are respectively governed by the Solicitor-General's prosecution guidelines or established Court processes (in the case of infringement offence notices)
  - decisions on pecuniary matters relating to invoicing and payment of fees and charges
  - decisions made under the CAA's authority as the designated agency in respect of the aviation sector under the *Health and Safety at Work Act 2015* (rather than the 2023 Act)
  - decisions made to set standards – the IRF only covers decisions made with respect to the application of standards, rather than the setting of standards
  - matters relating to non-decisions or the timeliness of decisions.
20. With the exception of the above matters, however, any regulatory decision of the Director or delegate is potentially reviewable if so specified by the regulations.

### What criteria will be used to compare options to the status quo?

21. The criteria used to assess options to determine the scope of reviewable decisions are:
  - Effectiveness: how well would the option achieve the intended policy objectives? – namely to provide an a readily-accessible expert independent review option that is quicker and less costly compared to consideration by the courts, which also strengthens accountability and supports impactful improvements in decision-making in the aviation regulatory system over time.
  - Equity/fairness: would the option achieve the fair treatment of participants?

### What options are being considered?

22. We considered three options for setting the scope of reviewable decisions for the IRF as set out below.
23. We did not however assess their relative merits relative to the status quo (as is generally done under the standard RIS format). This is because the status quo would represent making no regulations to activate the review function – given that it would fail to give effect to the function that the 2023 Act has created, the status quo is not a credible option.

### *Option 1 – Aligning with right of appeal to the Courts*

24. This option sets the scope of decisions **based on the relevant categories of decisions that are already subject to appeal to the District Court**, which are set out in section 453(3) of the 2023 Act.<sup>5</sup>
25. It focuses reviews primarily on decisions linked to the granting, renewal, suspension, revocation, or imposition of conditions of ‘aviation documents’– e.g. a pilot’s licence or an air operator’s certificate, airworthiness certificate or maintenance engineer’s licence. These decisions primarily determine whether an applicant is a ‘fit and proper’ person or operator to participate in the civil aviation system and set the key conditions for their participation.
26. Around 2,000 decisions a year are made covering the above categories.

### *Option 2 – Based on Option One with decisions on individual exemptions*

27. This option includes all the categories of decisions covered under Option 1, but also includes decisions made by (or on the behalf of) the Director **to grant, or not to grant, individual exemptions from regulations or Rules**.<sup>6</sup>
28. Exemptions may be granted, with appropriate conditions, where an aviation participant is unable to comply with a prescriptive Rule requirement and there is no alternative means of compliance available to them. The critical issue for an exemption decision is whether it enables the same level of safety, or risk control, to be achieved as the Rule is intended to achieve.
29. Exemption decisions can relate to requirements specified in most of the 50 Rule Parts. Fewer than 100 decisions on exemptions are made each year.

### *Option 3 – The broadest scope*

30. Under this broader option, **all decisions** taken in relation to sector participants by (or on behalf of) the Director are potentially reviewable. The only exceptions would be categories of decisions that are inappropriate or inapplicable, as detailed in paragraph 19 above.
31. This option includes the Director’s decisions covered under Option 1 and Option 2 but would also include a wide range of more minor miscellaneous decisions made by personnel (delegated by the Director) under the 50 Rule parts.
32. In the region of 100,000 decisions a year are made covering all the categories within scope of this option, including operating, technical, training and competency approvals, acceptance of alternative means of compliance with Rule requirements, and acceptance of amendments to operators’ operational and technical arrangements.

## **Results of public consultation**

33. On 29 July 2024, Cabinet agreed that the Ministry release a consultation document and seek stakeholder feedback on the three options set out above. The Ministry’s Regulatory Impact Analysis Review Panel reviewed the consultation document and determined that it contained sufficient impact analysis to support Cabinet’s decision to

<sup>5</sup> Certain categories of decisions set out in section 453(3) would need to be outside the scope of the IRF as it would be inappropriate, or not relevant, to include them – for example, medical certification decisions [s453(3) (g)-(k)], which are covered by the medical convener function, and decisions relating to investigation and enforcement [s453(3) (e)-(f)] where there is a need for the CAA to act promptly to address public safety or security risks.

<sup>6</sup> However, decisions applying to any class of “aviation participant, aeronautical product, aircraft, aerodrome, aviation-related service or other thing” [section 322(1)(b) of the 2023 Act] would not be reviewable, as class exemptions are deemed secondary legislation under section 322(5), and thus they are effectively part of the settings of the regulatory framework. Any decisions on individual exemptions from medical standards and certification Rule requirements would also be excluded under this option.



release it. Therefore, a separate regulatory impact statement (RIS) was not required. [ECO-24-MIN-0128 refers]

34. The Ministry carried out the public consultation from 27 August 2024 to 24 September 2024, and received 13 submissions, including two submissions from the CAA.<sup>7</sup>
35. The CAA was strongly supportive of the IRF function. It favoured Option 1, submitting that the IRF scope should be limited to significant decisions. In its view, Option 3 would not support the policy intent for the IRF, as there would be a significant risk that the function would be unable to cope with the likely demand for reviews of minor decisions.
36. Three organisations favoured Option 2, on the grounds it would enable reviews of decisions on exemptions while ensuring the demand for reviews would be likely to be manageable.
37. Five organisations indicated they favoured Option 3 to ensure a wider range of decisions would be reviewable. Discussions officials later held with some of these submitters, however, clarified that many of the decisions they advocated for inclusion would in practice be covered under Option 2 (for example because they were applications for exemptions to Rules, so would fall within the scope of Option 2).
38. Three submissions offered no comment relevant to the scope options.

## Impact Analysis

39. Our assessment of the three options, drawing on the feedback from consultation is outlined in Table 1 below.

### Key:

- ++ much better than doing nothing
- + better than doing nothing
- 0 about the same as doing nothing
- worse than doing nothing

<sup>7</sup> One of the CAA submissions was on the medical convener process, so was out-of-scope.

**Table 1: How do the options compare?**

	Option 1 – Aligning with right of appeal to the Courts	Option 2 – Based on Option 1 with decisions on exemptions	Option 3 - The broadest scope
<b>Effectiveness</b>	<p>+</p> <ul style="list-style-type: none"> <li>Supports the policy intent of providing an accessible, fast and cost-effective independent review process.</li> <li>Focuses reviews on core decisions that affect the ability of individuals and organisations to operate in the civil aviation system.</li> <li>Provides a degree of certainty that the function would be able to operate on a manageable basis.</li> <li>There is a risk that some decisions made by CAA that may be (or may be seen to be) significant would not be captured under this option. Based on stakeholder feedback, the most prominent of these would be: <ul style="list-style-type: none"> <li>decisions on exemptions from Rules and regulations</li> <li>decisions made under the Rules on approval of changes to certain 'operating specifications' (Op Specs) – such as changes to operation locations, aircraft maintenance programmes and senior personnel.</li> </ul> </li> <li>Would minimise risks of not being able to effectively manage demand for the IRF within available resources.</li> </ul>	<p>++</p> <ul style="list-style-type: none"> <li>Offers essentially the same advantages as Option 1 but, by making decisions on exemptions reviewable, would provide a more complete coverage of Rule-related decisions which can potentially have a significant impact on aviation participants.</li> <li>Would enable decisions on changes to Op Specs to be reviewable in cases where they are considered by the Director as applications for exemptions. (Feedback from consultation indicated the most significant contested Op Specs decisions cited by stakeholders were considered as applications for exemptions.)</li> </ul>	<p>+</p> <ul style="list-style-type: none"> <li>Would ensure the widest possible range of CAA decisions that could affect sector participants could be subject to review decisions – including decisions on exemptions and the numerous relatively minor Rule-related decisions that would not be covered under Option 1 or Option 2.</li> <li>Would capture numerous but relatively low-level CAA decisions made under the Rules. Reviews of such decisions could place demands on the review function and the two reviewers, which could compromise its capacity to deliver timely reviews of decisions that have a more material impact on applicants.</li> <li>The risk of overloading the function might be mitigated to some extent by the intended introduction of partial cost recovery for reviews (<b>see Part B of this RCRIS</b>), but it could not be expected to significantly limit the prospect of numerous requests for reviews of more minor decisions. This is because the fee is to be set at a level that does not present an undue barrier to access to reviews of reviewable decisions.</li> </ul>

<b>Equity/Fairness</b>	<p style="text-align: center;">+</p> <ul style="list-style-type: none"> <li>• Focuses resources to deal with largely significant decisions in a timely manner.</li> <li>• May not meet some participants' expectations of the IRF as some decisions made by CAA that are, or are seen to be, significant by sector participants may not be included within scope – including decisions on individual exemptions.</li> </ul>	<p style="text-align: center;">+</p> <ul style="list-style-type: none"> <li>• Provides a more complete coverage of decisions which potentially have a significant impact on aviation participants than Option One.</li> <li>• May not meet some participants' expectations of the IRF, as some decisions made by CAA that are, or are seen to be, significant by sector participants may not be included within scope.</li> </ul>	<p style="text-align: center;">+</p> <ul style="list-style-type: none"> <li>• Would maximise sector participants' rights in the sense that a broad range of CAA decisions would potentially be subject to review.</li> <li>• Applications for reviews of decisions on the broader range of decisions, including the numerous more minor decisions, could mean that resources would be stretched more thinly and be less available to progress more significant cases in a timely manner.</li> </ul>
------------------------	---	---	---

PROACTIVELY RELEASED BY  
 THE MINISTRY OF TRANSPORT TE MANatūwhiri

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

40. We consider Option 2 would most effectively meet the policy intent of providing fast and accessible reviews, while supporting impactful improvements in decision-making in the aviation regulatory system over time.
41. Like Option 1, Option 2 provides a faster and less costly avenue to challenge 'appealable decisions' than going through the courts. However, Option 2 also includes decisions on individual exemptions and thus provides more complete coverage of decisions that could have a significant impact on aviation participants, compared to Option 1.
42. Option 3, with its broad scope including lower-order decisions, is less likely to facilitate the faster review pathway that the IRF is intended to provide because (even despite the application fees that are being put in place) there is a residual risk that the demand for reviews under this option could:
  - limit the reviewers' capacity to deliver timely reviews of the categories of decisions that have the most significant impact on applicants (this was acknowledged by several submitters)
  - impose demands on CAA resources that intrude on the agency's day-to-day regulatory operations, and limit the Director's ability to make final decisions on reviewers' recommendations within the statutory time frame
  - dilute the incentives for participants to resolve issues with the CAA before escalating them to the level of a IRF review.
43. Implementing Option 2 would minimise the risks to managing the IRF within available resources. This will be especially important during the initial months of its operation, when the process is new and reviewers are settling into their respective roles.
44. Option 2 may be viewed by some aviation participants as a less equitable approach to setting the scope of the IRF than Option 3 – particularly by those who have concerns about specific types of decisions excluded under Option 2 but included under Option 3. On the other hand, Option 3 itself could be viewed as potentially impinging on the rights of those seeking reviews of the most impactful decisions, as there is a greater risk of IRF resources being stretched more thinly and the performance of the function being compromised under Option 3. Taking account of the range of views from public consultation, we are satisfied that Option 2 is the appropriate option.

### Future flexibility

45. As experience with implementation of the IRF accumulates after the IRF becomes operational, the Ministry would be prepared to consider expanding the scope of decisions subject to review under Option 2, if compelling evidence were to emerge that additional categories of decisions should be included.

**Table 2: Combined marginal costs and benefits of the preferred options for scope**

<b>Additional benefits of the preferred option compared to taking no action</b>			
<b>Affected groups</b>	<b>Comment</b>	<b>Impact</b>	<b>Evidence Certainty</b>
<b>Regulated groups (individuals &amp; organisations)</b>	Applicants will benefit from not having to meet legal costs and lengthy delays inherent in court action. In cases where an IRF review leads to the overturning of a Director's decision, the applicant will benefit from the change in the decision.	Benefits will vary widely according to circumstances that cannot be reliably predicted.	<b>High</b>
<b>Regulator (CAA)</b>	Reviews will introduce greater scrutiny of the Director's decision-making. This could be expected to strengthen the robustness of, and increase public confidence in, the regulatory system over time. In some cases, an aviation participant may opt to apply for an IRF review rather than take court action, which could be expected to be less costly for the CAA.	It is not possible to quantify these benefits at this stage.	<b>Low</b>
<b>Consumers</b>	The operation of the IRF can be expected to raise public confidence in the performance of the civil aviation regulators.	Not quantifiable – benefits will need to be assessed over time through performance measurement and sector feedback.	<b>Low</b>
<b>Additional costs of the preferred option compared to taking no action</b>			
<b>Regulated groups (individuals &amp; organisations)</b>	Costs will be confined to review application fees, which will only affect those who elect to apply for a review.	Low - we are recommending that fees be set at a 'partial cost recovery' level that does not present an undue barrier to access to reviews ( <i>see Part B of this RCRIS</i> ). There will be no cost implications for aviation participants that do not use the IRF mechanism.	<b>High</b>
<b>Regulator (CAA)</b>	The CAA will incur costs in responding to a review application and the reviewer's recommendations. The preferred option is expected to moderate demand for reviews (compared to Option 3).	The costs to the CAA will be highly contingent on demand, subject matter and complexity, which are unknown factors at this stage.	<b>Low</b>
<b>Consumers</b>	The preferred option will impose no costs on consumers.	Nil	<b>High</b>

## Section 3: Delivering an option

### How will the new arrangements be implemented?

46. As the department responsible for administering the 2023 Act, the Ministry of Transport will provide administrative and functional support necessary to ensure the effective delivery of the review function. This role will include secretarial support for the reviewer(s). The Ministry will establish and maintain procedures for handling review applications, record keeping, provision of guidance to applicants and liaison between applicants, the reviewer(s), and the CAA. The Ministry will be responsible for the remuneration of the reviewer(s).

### How will the new arrangements be monitored, evaluated, and reviewed?

47. The Ministry will provide administrative support for the IRF and monitor its performance once it is operational.
48. This will include assessing the volume of review applications and the resources required to carry out reviews – e.g. the time, expertise and costs of the review process – and feedback from stakeholders on the utility of the function.
49. As experience with implementation of the review function accumulates, the scope of decisions subject to review could be amended, if compelling evidence were to emerge that certain categories of decisions not covered under this option should be included.

PROACTIVELY RELEASED BY THE MINISTRY OF TRANSPORT TE Kaitiaki Take Kōwhiri

## Part B – Fees to partially recover the operational costs of the function

### Problem definition

50. The independent review function will be administered by the Ministry, which will incur the associated operational costs, including reviewer remuneration and related expenses, and the costs of independent technical advice where required.
51. In the absence of a cost recovery charge, the costs of the review function would need to be met entirely by the general taxpayer. Because reviews will provide a direct benefit to review applicants, there is a strong case to apply some degree of cost recovery to help meet the costs of the function.

### Policy decision

52. The Minister of Transport has instructed the Ministry to progress work to cost recover for expenses that it incurs directly and indirectly in relation the IRF, including, as appropriate, remuneration of the reviewers.

### Statutory authority to charge

53. Section 415(1) of the 2023 Act provides statutory authority for the Government to apply IRF review fees. Given applicants will be the primary beneficiaries of reviews there is a sound rationale to consider applying cost recovery for the function.

### Cost Recovery Principles and Objectives

54. The principles guiding the cost recovery proposal are as follows:
  - allocation of review costs should broadly reflect public and private benefits of the service
  - all relevant direct and indirect departmental costs should be included in the base cost of the function
  - fees should not be set at levels that preclude or significantly impede the statutory rights of sector participants seeking well-founded reviews
  - fees should be structured simply, fairly, and efficiently.
55. These principles are derived from Treasury and Office of the Auditor General guidance and informed by the Ministry's 'transport regulatory system funding principles' and the Ministry of Justice cost recovery principles.
56. The objectives of the proposal are that:
  - fees reflect private benefits to IRF users and Crown funding reflects public benefits from the civil aviation regulatory system
  - fees are set at a level sufficient to encourage efficient use of the IRF resources but not so high as to preclude or significantly impede applicants of limited means commencing a well-founded review.

## Policy Rationale: Why a user charge? And what type is most appropriate?

### The review function provides private good benefits

57. The IRF benefits aviation participants, enabling them to challenge a Director's decision through a process that avoids the costs and delays involved in challenging a Director's decision in court. Subject to the scope of decisions that regulations specify as reviewable, it may also allow participants to challenge decisions that are not



appealable. If a review results in a Director's decision being overturned, the applicant would also benefit from being able to exercise the rights or privileges they were previously denied as a consequence of the original decision.

### It will also provide public good benefits

58. The IRF is expected to promote good CAA decision-making by strengthening accountability and supporting improvements in regulatory decisions over time, which will generate public good benefits through:
- enhanced effectiveness of the regulatory system
  - increased public confidence in the regulatory system.
59. While they will be valuable, such benefits will be less immediately evident than the benefits of participants' access to the right to challenge a Director's decision. Improvements to CAA regulatory decision-making, and sector/public confidence in the performance of the regulatory system as a result of IRF scrutiny can be expected to take time and will emerge only gradually.

### Full or partial cost recovery?

60. While a review directly benefits the applicant, charging applicants the *full* cost of reviews is likely to compromise the policy intent of the review function by deterring sector participants of lesser means from exercising their statutory right to seek reviews.
61. Full cost recovery would thereby not reflect the broader public good objective of promoting better regulatory performance and public confidence in the CAA as the aviation safety regulator.
62. Therefore there is a strong rationale to apply *partial* cost-recovery, given that it would:
- present less of a barrier for individuals of lesser means to access reviews than full cost-recovery, and so ensure that the intent of the review function is not compromised
  - broadly reflect the mix of private and public good benefits the review function is expected to generate
  - support efficiency in the operation of the function.
63. In exploring what an appropriate level of cost recovery for review applications might be, the Ministry considered relativity to the CAA fees applicable to reviewable transactions, such as the granting of a licence. However, those fees (at present generally ranging from \$131 to \$299 including GST), if used as a benchmark for IRF fees, would result in a very low level of cost-recovery and be of limited value in terms of managing potential IRF workload.
64. The Ministry recognises that, at the proposed partial cost recovery level, the Crown will bear a higher proportion of costs than users of the review function. In the Ministry's view, this is unavoidable if, on the one hand, fees are not set so high as to compromise the purpose of the IRF and, on the other, sufficient funding is available to ensure that the IRF established by the 2023 Act can be delivered effectively, efficiently and fairly.

### The Ministry identified three partial cost recovery options

**Option 1 – a single fixed fee** for all participants. This would be based on a representative average review cost (rather than based on the actual costs of each respective review, which will vary from case-to-case). The proposed fee would be \$1,000 (excl. GST) per application.

**Option 2 – a two-tiered fixed fee.** Organisations would pay a higher fixed fee than in Option 1. This reflects that reviews of decisions affecting organisations are likely to be more technical and complex. The proposed fees would be \$1,000 (excl. GST) per application for individuals, and \$1,500 (excl. GST) per application for organisations.



**Option 3 – an hourly fee up to a cap.** This option would provide the potential to base the level of cost recovery more closely on the actual costs arising from each respective review. There would be a base fee of \$432 (excl. GST) payable on application, plus an hourly fee of \$189 (excl. GST) payable at the conclusion of the review, up to a cap of \$1,000 (excl. GST) for individuals and \$1,500 (excl. GST) for organisations. This two-stage payment process is an additional administrative factor compared to Option 1 and Option 2.

**Table 3: Assessment of options against cost recovery principles**

Principle	Option 1 Single fixed fee	Option 2 Tiered fixed fees	Option 3 Hourly charge
<b>Allocation of IRF costs should broadly reflect the public and private benefits of the service</b>	<b>+</b> Partial cost recovery reflects the mix of both private benefits to IRF users and the public benefits relating to the operation of the civil aviation regulatory system.	<b>+</b> Partial cost recovery reflects the mix of both private benefits to IRF users and the public benefits relating to the operation of the civil aviation regulatory system.	<b>+</b> Partial cost recovery reflects the mix of both private benefits to IRF users and the public benefits relating to the operation of the civil aviation regulatory system.
<b>All relevant direct and indirect departmental costs should be included in the base cost of the IRF</b>	<b>+</b> IRF costs include direct reviewer costs and IRF-related direct and indirect costs incurred by the Ministry.	<b>+</b> IRF costs include direct reviewer costs and IRF-related direct and indirect costs incurred by the Ministry.	<b>+</b> IRF costs include direct reviewer costs and IRF-related direct and indirect costs incurred by the Ministry.
<b>Fees should not be set at levels that preclude or significantly impede applicants seeking well-founded reviews</b>	<b>+</b> The fee level recognises the likely limited ability of some individuals to pay a high fee. It does not factor in organisations' likely greater ability to pay (or to pass on costs). Not does it reflect that reviews relating to organisations are likely to be more complex and costly to consider.	<b>+</b> This two-tiered fee approach, with a higher fee for organisations, recognises that organisations tend to have a greater ability to pay than individuals, and that their review applications are likely to involve more complex considerations. The approach recovers marginally more revenue than Options 1 and 3.	<b>+</b> Capping fees at the same levels as for Option 2 would take into account the same ability to pay and complexity of review considerations. Under this option, fees for organisations might potentially be lower than the fixed fee in a simple case but that is very unlikely in the case of the fee for an individual.
<b>Fees should be structured simply, fairly, and efficiently</b>	<b>+</b> All applicants pay the same fee and have certainty as to costs. A fixed fee is simple to administer.  This option though does not take into account likely differences between individuals' and organisations' ability to pay.	<b>++</b> Applicants have certainty as to costs. A higher fee for organisations better reflects higher expected review costs (given complexities of decisions affecting organisations) and greater capacity to pay compared to individuals. Fees would be simple to administer.	<b>0</b> A variable charge is more complex to administer than a fixed fee. It could also result in added collection costs to the Ministry if applicants dissatisfied with their review outcome declined to pay the, second, hourly fee component.
<b>Provisional overall assessment</b>	Meets the cost recovery principles but does not fully take into account differences between individuals' and organisations' ability to pay. Is relatively simple to administer.	Preferred approach.  Meets the cost recovery principles. Better recognises ability to pay and that reviews of decisions affecting organisations are likely to be more costly. Is relatively simple to administer.	Is complex to administer, creates revenue risk and is less efficient than fixed fee(s), while being unlikely to result in fees that differ materially, if at all, from the fees that would be payable under Option 2.

## Option 2 is the preferred option

65. The proposed partial cost recovery approach under Option 2 supports the objectives for the IRF. The principal strengths of Option 2 are that:
- unlike the single fee under Option 1, a two-tier fixed fee would accommodate the likelihood that organisations will generally have greater capacity to pay than individuals, and the tendency for decisions affecting organisations to be more technical and complex<sup>8</sup>
  - Option 2 utilises a fixed fee structure it would be reasonably simple to administer, unlike Option 3
  - Option 2 will raise (marginally) more revenue than Option 1, and is not subject to the revenue uncertainty that Option 3 would involve.

## Type of charge proposed: a fixed fee

### Rationale

66. A fixed fee is preferred because, while the amount of reviewer's time required for a review can be expected to vary from case to case, the likely degree of variation for this new function is uncertain. The administrative steps will be largely the same for all applications. A fixed fee will also provide applicants with certainty as to costs and be simpler and more efficient for the Ministry to administer.

### Who will pay the cost recovery charges?

67. A review applicant could be any of the 35,095 individuals that hold an aviation document (as at June 2023), or a person seeking to become an aviation document holder. Most individual aviation document holders are pilot licence holders (30,061 individual licences). Other licensing categories include engineer, flight instructor and air traffic controller. Additionally, 890 organisations hold aviation documents, such as air operator, aircraft maintenance organisation, aerodrome operator and aircraft registration certificates.<sup>9</sup>
68. While the number of aviation document holders is large, only a relatively small proportion of those persons would, in any given year, be subject to a reviewable decision, such as a decision to issue or renew a document or to impose conditions on, suspend or revoke a document. The Ministry anticipates that a very much smaller proportion of decisions will result in a review application.
69. Drawing on experience with the medical convener function, and based on the recommended scope of the IRF proposed in Part A of this document, the Ministry estimates the number of independent review applications will be between 30 and 90 a year, and that the average IRF review will involve around 15 hours of a reviewer's time.<sup>10</sup>

<sup>8</sup> Organisations are subject to many more, and more detailed, Rules than individual, and reviews of decisions affecting them are more likely to be complex and time-consuming (eg airworthiness approvals of avionics equipment) and thus more costly.

<sup>9</sup> Source: Civil Aviation Authority of New Zealand 2022–2023, Annual Report (2023).

<sup>10</sup> This is based on high and low demand scenarios, and assumes that, because the IRF will apply to more than just the one type of Director's decision, the number of IRF review applications is likely to be greater than the typical 15-20 medical review applications.

## The level of the proposed fee and its cost components (cost recovery model)

### Design of cost recovery charges

70. The cost recovery model upon which the proposed fee levels are derived is based on data from the medical convener function, which carries out reviews of the Director's medical certification decisions, and is the model upon which the IRF was designed. The two main elements comprising the estimated costs of the IRF are set out below.

### Remuneration of reviewers

71. The daily remuneration rate for the independent review function is yet to be determined but we assume it will align with the \$1,513 daily rate (\$189 per hour excl. GST) for the medical convener.
72. Based on the estimate of 30-90 reviews being carried out a year the annual cost of reviewer remuneration would range between \$85,050 and \$255,150. Within that average, the actual effort and cost for individual reviews can be expected to vary considerably, depending on the subject matter and complexity of the decision at issue.<sup>11</sup>

### Costs of secretariat and functional support for the review process

73. For all options, the following assumptions apply to the costing of Ministry administrative support for the IRF application process:
- work will be performed by a mid-range Level 2 advisor at a salary of \$105,000 including KiwiSaver and ACC oncosts, plus an overhead of 45% for corporate costs, equating to \$152,250 – or based on 1,400 available person hours in a year, an average hourly cost of \$108
  - based on workflow process mapping for all administrative steps from receipt of an application through to notification of a final decision, the Ministry estimates that each application will involve a cumulative four hours of administrative effort.
74. The resulting cost to the Ministry therefore equates to \$432 per application.

### Forecast revenue

75. Revenue from fees will be driven by the number of review applications and the proportions of applications submitted by individuals and organisations. Based on the expectation that most review demand will come from individuals, we assume a 2:1 ratio for applications from individuals and organisations. Applying this assumption to the estimated range of application numbers, estimated annual revenue and costs under Option 2 will be as shown in Table 4 below.
76. Based on the estimates in Table 4, the residual cost to the Ministry of the IRF function will range from \$63,010 for 30 annual reviews to \$189,030 for 90 annual reviews. This would be met from the Crown funding provided in Budget 2023 for the implementation of the 2023 Act, which totals \$7.305 million over four years, with \$1.910 million per year in the Ministry's baseline in 2025/26 and out-years.

---

<sup>11</sup> Some IRF reviews may involve technically complex issues so reviewers may require specialist advice. The Ministry expects such instances to be rare, given CAA technical expertise will feed into the evidence that the Director must provide to the reviewer on the matter at issue under the review. The impact of any such costs on IRF funding cannot realistically be gauged.

**Table 4: Costs and fee revenue estimates (ex. GST)**

	Total review applications = 30		Total applications = 90	
Reviewer remuneration	\$85,050		\$255,150	
Ministry staff costs	\$12,960		\$38,880	
<b>Total costs</b>	<b>\$98,010</b>		<b>\$294,030</b>	
<b>Fee revenue</b>	Number	Revenue	Number	Revenue
Individuals	20	\$20,000	60	\$60,000
Organisations	10	\$15,000	30	\$45,000
<b>Total revenue</b>	<b>\$35,000</b>		<b>\$105,000</b>	

## Impact analysis

### Number of people and businesses affected

77. The proposed fee will only apply to a person, business or other entity that applies for the review of a Director's decision. We assume that the maximum level of demand will be around 90 reviews per annum and that most applicants will be individuals rather than businesses.
78. For review applicants, the application fee would be additional to any fee applicable to the CAA in respect of the original relevant decision. It would, however, be far lower than the costs associated with court action (if applicable) to challenge that same decision.

### Impact on the Ministry

79. Based on the expected volume of review applications, the Ministry considers that the collection and administration of review application fees is an isolated activity that can be managed from within existing Ministry capability, without materially affecting other business activities.

### Reasonableness of proposed fee

80. These fee levels are based on an assessment of expected review costs and the Ministry's assessment of what would be a fair and reasonable level of cost-recovery in the context of the purpose of the IRF. There are few examples of charges for reviews of a comparable nature, either in other jurisdictions or under domestic legislation.
81. In the case of reviews of decisions of the Australian Civil Aviation Safety Authority (CASA), reviews are undertaken by the Australian Administrative Appeals Tribunal. The Tribunal's standard application fee of AU\$1,082 applies to those reviews.
82. In other comparable jurisdictions, most notably the United Kingdom, no fee applies to applications for review of aviation safety regulator decisions.
83. There is no clear basis for a local fee comparison, although we note that the fee for appeals to the New Zealand Immigration and Protection Tribunal under the Immigration and Protection Tribunal Regulations 2010 is set at \$910.

## Consultation

84. In September 2024, Cabinet directed the Ministry to consult stakeholders on options for partial cost recovery. The Ministry's advice to Cabinet was underpinned by a Stage 1&2 Cost Recovery Impact Statement (CRIS), which was assessed by the Ministry's Regulatory Impact Analysis Review Panel as partially meeting the quality assurance criteria, as the proposal had not yet been subject to public consultation [ECO-24-MIN-0214 refers].
85. The Ministry undertook four weeks public consultation on the three partial cost recovery options during October 2024. Three submissions were received - one in favour of each of Option 1 and Option 2, while the third submission favoured a variable approach, based on the outcome of a review, with no fees being applied at all in cases where the review is successful and a Director's decision is reversed.

## Conclusions and recommendations

86. Taking into account the feedback provided from consultation, the Ministry considers Option 2 to be the most appropriate option for partial cost recovery.
87. The different fee levels for organisations and individuals under Option 2 are appropriate, as decisions affecting organisations are likely to be more technically complex and therefore more time-consuming to review, and organisations can generally be expected to have a greater capacity to pay than individuals. Option 2 also utilises a fixed fee structure that would be more straightforward to administer than the hourly fees proposed under Option 3, and would raise (marginally) more revenue than Option 1, while providing more certainty about potential costs for applicants.
88. The Ministry will meet the remaining costs of the review function from within the baseline funding provided in Budget 2023 to help meet the costs of implementing the 2023 Act. A Crown contribution to IRF costs would ensure that the public policy objective of the review function is not compromised and would reflect that, over time, the review function is expected to produce public good benefits through improvements to regulatory performance and confidence in the civil aviation regulatory system.

## Implementation plan

89. Subject to Cabinet approval, and regulations being drafted, fees will apply with effect from 5 April 2025, when the 2023 Act comes into force. The fee and the application procedure will be notified on the Ministry's and CAA's websites. Fees will be handled and accounted for through the Ministry's manual payments system. (The expected annual volume of applications and revenue will be insufficient to justify the expense of designing and implementing an IT solution.)
90. The Ministry will collect the fee at the time an application for a review has been accepted, with the fee payable through internet banking. As the fee must be paid on acceptance, no enforcement action will be necessary in the event of non-payment.

## Monitoring and evaluation

91. The Ministry will monitor the performance of the reviewer/reviewers, record the time that it takes for a reviewer to review each application, and monitor and record associated costs such as costs for specialist technical expertise to assist in consideration of a review application.
92. The Ministry will also monitor and record the time spent by Ministry staff in dealing with review applications, and will evaluate the results to ensure that the associated procedures are being undertaken in a timely and efficient manner.

## Review

93. Once the IRF is 'bedded in' and monitoring of the IRF has generated sufficient performance and cost data to do so with a reasonable level of confidence, the Ministry will review the IRF cost recovery arrangements. With the benefit of that hard data, the review will be able to revisit demand, effort and cost assumptions, assess implications for the level of cost recovery, and identify any consequential fee changes that might be necessary. As part of the review, the Ministry will also consider whether the fee has had any impact on uptake of the right to seek independent reviews of Director's decisions.
94. The Ministry expects sufficient information to have become available to undertake the review within the three-year cycle that is best practice for reviews of fees and charges.

PROACTIVELY RELEASED BY  
THE MINISTRY OF TRANSPORT TE MANATŪ WAKA





5 November 2024

OC241259

Hon Simeon Brown

Action required by:

Minister of Transport

Tuesday, 12 November 2024

## INDEPENDENT REVIEW FUNCTION – SCOPE AND COST RECOVERY: NEXT STEPS

### Purpose

Seek your feedback on our proposed next steps for setting the scope of the independent review function (IRF) for civil aviation and introducing fees for IRF reviews.

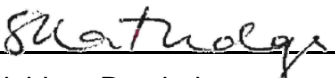
### Key points

- The Ministry consulted on three options for setting the scope of the IRF over four weeks to 24 September 2024. We received 13 submissions and subsequently met with four organisations to discuss their feedback.
- Drawing on the feedback received, our assessment is that the scope of decisions covered by the IRF should comprise:
  - the key categories of decisions taken by the Director of Civil Aviation (the Director) that are appealable to the District Court
  - decisions taken by the Director on the granting of individual exemptions from regulations and the Civil Aviation Rules.
- The above approach – labelled 'Option 2' in the consultation document – would most effectively meet the policy intent of providing fast and less costly reviews of appealable decisions than the Courts, while supporting impactful improvements in decision-making over time. It would also help ensure the function is manageable within available resources.
- We also received three submissions on the public consultation carried out in October 2024 on options to partially recover the cost of IRF reviews.
- Drawing on this feedback, our assessment is that it is appropriate for regulations to set two-tier fixed fees of \$1,000 (excl. GST) per review application for individuals, and \$1,500 (excl. GST) per review application for organisations.

- Subject to your agreement, we propose to draft a Cabinet paper for your consideration and feedback seeking Cabinet:
  - agreement to proceed with the options identified above for setting the scope of the IRF and the application of IRF review fees
  - authorisation for you to issue drafting instructions to the Parliamentary Counsel Office (PCO) to create regulations on this basis.
- The Cabinet paper will need to be considered by the Cabinet Economic Policy Committee (ECO) and Cabinet during December 2024, to ensure the regulations can be in place by early March 2025 to support the 2023 Act's commencement on 5 April 2025.

We recommend you:

- 1 **agree** that the Ministry draft a Cabinet paper for your consideration, which seeks Cabinet's agreement for regulations to be created to set the scope of the independent review function and introduce review fees, based on the preferred options identified in this paper. Yes / No

  
 Siobhan Routledge

**Director Aviation, Policy Group**

5 / November / 2024

Hon Simeon Brown  
**Minister of Transport**

..... / ..... / .....

**Minister's office to complete:**

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Siobhan Routledge, Director Aviation, Policy Group	s 9(2)(a)	
Tom Forster, Manager, Aviation		✓
Laurence Tyler, Senior Adviser		



## INDEPENDENT REVIEW FUNCTION – SCOPE AND COST RECOVERY: NEXT STEPS

**The Civil Aviation Act 2023 (2023 Act) that comes into force on 5 April 2025 introduces a new independent review function (IRF)**

- 1 The IRF enables applicants to seek expert independent reviews of decisions made by (or on behalf of) the Director of Civil Aviation (the Director). It provides an independent review option that is faster and less costly than the court system. It also promotes transparency, timeliness and accountability, and will support improvements in decision-making in the aviation regulatory system over time.

### **The 2023 Act requires that regulations specify the scope of the function**

- 2 The 2023 Act leaves the categories of decisions covered by the IRF to be specified in regulations. On 29 July 2024, Cabinet agreed that the Ministry release a consultation document seeking stakeholder feedback on three options to set the scope of the IRF [ECO-24-MIN-0128 refers].
- 3 The three scope options consulted on were:
  - 3.1 Option 1 – scope includes the relevant categories of **Director decisions that are appealable to the District Court**. This option focuses reviews primarily on decisions centred on ‘aviation documents’ that affect the ability of individuals/entities to operate within the civil aviation system. Around 2,000 decisions a year would be covered by this option.<sup>1</sup>
  - 3.2 Option 2 – scope includes Option 1 with the **addition of decisions on the granting of individual exemptions** from regulations and Civil Aviation Rules (Rules). Fewer than 100 decisions on exemptions are made each year.
  - 3.3 Option 3 – scope includes **all regulatory Director decisions** except where inappropriate or not relevant.<sup>2</sup> Around 100,000 decisions a year would be covered by this option.
- 4 The Ministry received 13 submissions – three from individuals and 10 from civil aviation organisations, including two submissions from the Civil Aviation Authority (CAA).<sup>3</sup>

*The submissions expressed a range of different views*

- 5 The CAA indicated it strongly supports participants being able to challenge decisions that have a major bearing on their ability to participate in the sector in a way that is more accessible than the court system. It submitted that the IRF scope should be

<sup>1</sup> Certain appealable decisions would not be included within the scope of the IRF under this option, where this would be inappropriate or not relevant – eg medical certification decisions (that are covered by the existing medical convenor review function); security/enforcement decisions and decisions made by the Secretary of Transport (rather than the Director).

<sup>2</sup> Examples of excluded decisions include medical certification decisions, decisions where prompt action is necessary to address immediate public safety or security risks, decisions governed by the Solicitor-General's prosecution guidelines, and decisions on pecuniary matters relating to invoicing and payment of fees and charges.

<sup>3</sup> One of the CAA submissions focused on the medical convenor process, which is outside the scope of the IRF.

limited to significant decisions that are appealable under the 2023 Act (effectively Option 1). It submitted that Option 3 would not support the policy intent for the IRF because there is a significant risk that the function would be overloaded with the demand for reviews of more minor decisions, which would inhibit the timely reviews of more impactful decisions.

- 6 Three organisations favoured Option 2 on the grounds that it would enable reviews of decisions on exemptions while ensuring the demand for reviews would likely be manageable.
- 7 Five organisations favoured Option 3 on the grounds that it would ensure the widest range of decisions are reviewable. Subsequent discussions held with some of these organisations clarified that many of the decisions they advocated for inclusion would in practice be covered under Option 2.
- 8 In particular, Air New Zealand, the New Zealand Airports Association (NZ Airports) and the Aviation Industry Association (AIANZ) submitted that approvals of changes to certain 'operating specifications' (Op Specs) should be reviewable by the IRF. They referred to recent examples of approvals of changes to operation locations, aircraft maintenance programmes and senior personnel. Subsequent discussions we held with these organisations, however, clarified that many examples they gave of these Op Spec decisions had in fact been considered by the Director as applications for exemptions, so they would have been within scope of Option 2. Some other issues they cited with recent approvals of Op Specs were more about how *strictly* the Rules are currently drafted, rather than the quality of judgements made by (or on behalf of) the Director in applying them.
- 9 The three submissions from individuals offered no comment relevant to the scope options.
- 10 Annex One provides a more detailed summary of the submissions.

*We consider Option 2 to be the most appropriate option to achieve the policy intent of the function*

- 11 Option 2 most effectively meets the policy intent of providing fast and less costly reviews than the court system, while supporting impactful improvements in decision-making in the aviation regulatory system over time. Option 2 would also respond to submitter feedback that supported including decisions on individual exemptions, and in doing so would provide more complete coverage of decisions that can have a significant impact on aviation participants.
- 12 Option 3, with its broad scope including lower-order decisions, is less likely to facilitate the faster review pathway that the IRF is intended to provide. There are risks that the demand for reviews of the numerous lower-order decisions covered by this option could:
  - limit the reviewers' capacity to deliver timely reviews of the categories of decisions that have the most significant impact on applicants (this was acknowledged by several submitters)

- impose demands on CAA resources that intrude on the agency's day-to-day regulatory operations, and limit the Director's ability to make final decisions on reviewers' recommendations within the statutory time frame
  - dilute the incentives for participants to resolve issues with the CAA before escalating them to the level of a IRF review.
- 13 The risk of overloading the function under Option 3 might be mitigated to some extent by the intended introduction of review fees (see following section). However, we do not expect this would significantly limit the prospect of numerous requests for reviews of more minor decisions under Option 3, given that review fees are to be set at a 'partial cost recovery' level so as not to present an undue barrier for applicants.
- 14 Implementing Option 2 will minimise the risks to managing the IRF within available resources. This will be especially important during the initial months of its operation, when the process is new and reviewers are settling into their respective roles.

### The Ministry has completed public consultation on cost recovery options

- 15 On 24 September 2024, Cabinet agreed that the Ministry should publicly consult on options to partially recover the costs of the IRF through the application of review fees. [ECO-24-MIN-0128 refers]. A partial cost-recovery approach recognises that applicants are the primary beneficiaries of the review function, while enabling review fees to be kept at a relatively affordable level for sector participants than full cost-recovery.<sup>4</sup>
- 16 The consultation document set out three options and fee levels to partially recover the costs of IRF reviews, based on the key principles for cost recovery derived from agency guidelines:<sup>5</sup>
- Option 1 – **a single fixed fee** for all participants, set at \$1,000 (excl. GST) per application.
  - Option 2 [preferred option] – **a two-tiered fixed fee** of \$1,000 (excl. GST) per application for individuals, and \$1,500 (excl. GST) per application for organisations.
  - Option 3 – **a base fee** of \$432 (excl. GST), **plus an hourly fee** of \$189 (excl. GST), up to a cap of \$1,000 (excl. GST) for individuals and \$1,500 (excl. GST) for organisations.
- 17 These fee levels are broadly comparable to those set for similar purposes in other contexts. For example, the Australian Administrative Appeals Tribunal (AAAT) applies a standard single application fee of AU\$1,082 for reviews of decisions made by the Australian Civil Aviation Safety Authority (CASA).

<sup>4</sup> At this stage the Ministry estimates that review costs will average \$3,300 (excl. GST) per review, though it is difficult to predict the nature and complexity of reviews that will be carried out once the function is operational.

<sup>5</sup> The principles were derived from the Ministry's Transport regulatory system funding principles, and Treasury and Office of the Auditor-General guidelines for cost recovery. The Ministry and Treasury guidelines stipulate that an agency should factor the users' ability to pay into the setting of fees, to ensure a cost recovery regime does not undermine the policy intent of providing the service.

*The Ministry received three submissions in response to the consultation*

18 The consultation closed on 29 October 2024. We received three submissions:

- Flying New Zealand supported Option 2.
- AIANZ favoured Option 1 as they considered it would create a level playing field between individuals and organisations, while also noting that Option 2 would be acceptable.
- The New Zealand Aviation Federation supported a varied approach depending on the outcome of the review. They advocated that no fee at all should be applied in cases where a review leads to a Director decision being overturned, while Option 3 should be applied if a review is unsuccessful and the Director's decision is upheld.

*We consider Option 2 to be the most appropriate option*

- 19 The different fee levels for organisations and individuals under Option 2 is appropriate as decisions affecting organisations are likely to be more technically complex and therefore more time-consuming to review<sup>6</sup>, and organisations can generally be expected to have a greater capacity to pay than individuals.<sup>7</sup>
- 20 Option 2 also utilises a fixed fee structure that would be more straightforward to administer than the hourly fees proposed under Option 3, and would raise marginally more revenue than Option 1, while providing more certainty about potential costs for applicants.

## **Next steps**

- 21 Subject to your agreement, we will prepare a draft Cabinet paper for your consideration seeking Cabinet's agreement to proceed with the preferred options identified above for setting the scope of the IRF and the application of IRF review fees. The Cabinet paper will also seek authorisation for you to issue drafting instructions to the Parliamentary Counsel Office (PCO) to create the new regulations on this basis.
- 22 Once you are comfortable with the draft Cabinet paper, we propose to consult the Treasury, the Ministry of Justice, the CAA and Parliamentary Counsel Office (PCO) on the draft, and inform the Department of Prime Minister and Cabinet.
- 23 We propose that the Cabinet paper be lodged with Cabinet Office by 5 December 2024, to enable it to be considered by the Cabinet Economic Policy Committee (ECO) on 11 December 2024 and Cabinet on 16 December 2024. This timeframe will enable the Cabinet Legislation Committee (LEG) to consider the two sets of regulations by the end of February 2025. Regulations must be in place in advance of the Act's implementation on 5 April 2025.

<sup>6</sup> Organisations are subject to many more, and more detailed, rules than individual, and reviews of decisions affecting them are more likely to be complex and time-consuming (eg airworthiness approvals of avionics equipment) and thus more costly..

<sup>7</sup> This may not be true in all cases.

**Related work on the IRF**

- 24 In November 2024, the Ministry will be carrying out interviews for the appointment of two IRF reviewers. Subject to your agreement, we propose that the Cabinet Appointment and Honours Committee (APH) consider the appointment of the selected reviewers in February 2024.
- 25 We will be providing you a separate update on the appointment process in December 2024.

PROACTIVELY RELEASED BY  
THE MINISTRY OF TRANSPORT TE MANATŪ WAKA

## ANNEX 1

### Summary of submissions on IRF Options

A total of 13 submissions were received from:

- Civil Aviation Authority (provided two submissions)
- Kea Aerospace – an unmanned aircraft operator
- Ardmore Flying School
- Air New Zealand
- NZ Airports Association
- NZ Aviation Federation – representing 19 member organisations
- Aviation Industry Association NZ (AIANZ) – representing 6 industry sectors
- Gliding NZ
- NZ Airline Pilots Association (NZALPA) representing pilots, air traffic controllers and flight service operators
- 3 individuals.

Not all submissions offered comment relevant to the scope options. Two individual submissions offered views on the medical convener process, with no further comment. The third individual submission commented on a range of procedural issues but offered no comment on the scope options.

Some submissions suggested the inclusion within scope of matters that go beyond what is feasible within the definition of a Director's decision under section 443 of the Civil Aviation Act 2023.<sup>8</sup> Those views are not detailed in this summary.

Summary of submitter support for options
<p><b>Option 1</b></p> <p>The <b>CAA</b> submitted that the IRF scope should be limited to significant decisions that are appealable under the 2023 Act. It considered that Option 3 would not support the policy intent for the IRF because there is a significant risk of the function being overloaded with demand for reviews of more minor decisions, which would inhibit the timely reviews of more impactful decisions.</p>
<p><b>Option 2</b></p> <p><b>Kea Aviation</b> and <b>Gliding NZ</b> favoured this option, noting that their primary concerns relate to Director's decisions on exemptions from rule requirements. They also suggested Option 3 would likely result in overloading the function.</p> <p>The <b>NZ Aviation Federation</b> also favoured Option 2, primarily as it would enable decisions on exemptions to be challenged.</p> <p><b>Air New Zealand</b> indicated they could accept Option 2 as a minimum but strongly favoured Option 3.</p>

<sup>8</sup> These include security decisions made by aviation security officers (rather than the Director); decisions made under the CAA's authority as the designated agency in respect of the aviation sector under the *Health and Safety at Work Act 2015* (rather than the 2023 Act); decisions made to set standards (the IRF only covers decisions made with respect to the *application* of standards, rather than the setting of standards); and issues relating to non-decisions and the timeliness of decisions, both of which are also not reviewable under the 2023 Act.



**Option 3**

**Air New Zealand** favoured Option 3 as they viewed this approach would drive more consistency and transparency, and ultimately better regulatory decisions. They submitted that approvals of certain 'operating specifications' (Op Specs) – eg changes to operation locations, aircraft maintenance programmes and senior personnel – can have a material impact and therefore should be reviewable by the IRF.

**AIANZ** supported the broadest possible system for the independent review function. They submitted that its members experience most of their problems in areas that involve the application of rule requirements on Op Specs such as approvals of senior personnel changes, new routes or operating locations, technical data, and training courses.

The **NZ Airports Association** submission did not advocate a particular option but raised rule-related issues that, as matters stand, only Option 3 could address. In particular, they submitted that the IRF scope should include decisions on location-dependent permitted activities such as the construction of structures that can impact navigable airspace.

**NZALPA** favoured Option 3 but suggested there were grounds for this option to be even broader, by including additional categories of decisions.<sup>9</sup> The bulk of their submission focused on its members' issues with the medical convener regime (which it acknowledged are outside the IRF scope) and on the design of the IRF (which is set out in the 2023 Act and so is again out-of-scope).

**Ardmore Flying School** submitted that Option 3 best aligns with concerns expressed by the sector in submissions on the Civil Aviation Bill. Their specific concerns included the impact of decisions on training requirements and syllabus amendments and what they viewed as differing interpretations of the Rules.

**Follow-up discussions with four submitters**

The Ministry convened meetings with each of **NZ Airports Association**, **Air New Zealand**, **NZALPA** and **AIANZ** to discuss aspects of their submissions.

These discussions clarified that many of the examples of decisions these organisations cited in support of Option 3 (on the need for decisions on Op Specs to be included) had in fact been considered by the Director as applications for exemptions, so would be covered by Option 2.

The discussions also highlighted participants' concerns over the timeliness of CAA decision-making but, as officials explained, timeliness of decisions is not a reviewable matter under the 2023 Act. Some other issues they cited with recent approvals of Op Specs were more about how strictly the Rules are currently drafted, rather than the quality of judgements made by (or on behalf of) the Director in applying them.

There are more appropriate avenues for addressing some of these wider issues. For example, the problems operators cited regarding the lack of flexibility in the Rules would more appropriately be addressed through enhanced stakeholder input into the rule creation and rule amendment processes. We will be exploring this further as part of our regulatory stewardship role.

<sup>9</sup> For example, NZALPA noted concerns about the exclusion from Option 3 of a range of security and enforcement decisions, and decisions to delegate functions to personnel and third parties. Inclusion of these would not be appropriate as security and enforcement decisions are generally made where there is a need to act promptly to address immediate risks relating to public safety or security (also, most security decisions are made by aviation security officers rather than by the Director), while delegation decisions are part of the *setting* of the operation of the regulatory framework, and so are not made with respect to specific individual regulated parties, aircraft, aeronautical products or services.

Air New Zealand and AIANZ suggested that Option 3 could perhaps be applied with a 'materiality threshold' to reduce the risk of applications for reviews of minor decisions overloading the IRF. Officials noted, however, that designing such a mechanism would introduce subjectivity, complexity and uncertainty to setting the scope of the IRF, with the added risk of judicial challenges in cases of marginal decisions.

PROACTIVELY RELEASED BY  
THE MINISTRY OF TRANSPORT TE MANATŪ WAKA